IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 625 of 1985
With
FIRST APPEAL No. 624 of 1985
with
CROSS OBJECTION NO. [UNNUMBERED] OF 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
RAMESHBHAI NARANBHAI PATEL & 3 - Defendant(s)

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Appearance :
MS JYOTI MEHTA for Appellant
MR DR BHATT for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2 - 3.
MR RAJNI H MEHTA for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 31/07/2007

ORAL JUDGMENT

1. Gujarat State Road Transport Corporation, being

aggrieved by the award dated 23rd July, 1984 passed by the Motor Vehicle Claims Tribunal, Valsad at Navsari in M.A.C. Petition No. 28/83 [Arvindbhai Narsinhbhai Patel vs. Parshotambhai Bhikhubhai Tandel] and in M.A.C. Petition No. 29/83 [Rameshbhai Naranbhai Patel vs. Parshotambhai Bhikhabhai Tandel], is before this Court with a submission that the Court below erred in holding liability of the bus driver and also erred on the question of quantum.

2. The short facts necessary for disposal of the present appeals are that in headlong collision between a State Transport Corporation bus and a rickshaw, claimant-driver Arvindbhai Narsinhbhai Patel and passenger-Rameshbhai Naranbhai Patel suffered number of the injuries. A panchnama was prepared on the spot which showed that after the accident, the bus had gone to a distance of 76 feet while rickshaw had stopped only after some steps. Right side headlight of the bus was broken while total front of the rickshaw was damaged. Driver Arvindbhai Narsinhbhai and passenger Rameshbhai Naranbhai filed their

claims to the tune of Rs. 1,50,000/- and Rs. 50,000/- respectively. The learned Tribunal, after recording a finding that the driver of the bus and driver of the rickshaw were negligent to the extent of 75% and 25% respectively, each of the claimant was entitled to a particular amount. In First Appeal No. 624/85, claimant Arvindbhai has filed his Cross Objections.

3. Ms. Jyoti Mehta, learned counsel for the appellant submitted that from the evidence available on the records, it would clearly appear that driver of the rickshaw was the cause of the accident, because, the said driver was driving the rickshaw in the centre of the road and was unable to control the vehicle. She also submitted that the driver of the bus, in his effort to avoid the accident, went to the kachcha road and could stop the bus with great difficulty. Referring to the quantum of compensation, it is submitted that the Tribunal, after holding that monthly income of the claimant Arvindbhai was Rs.750/- erred in

holding that he would be entitled to Rs. 750/- per month though it has come on the records that disability suffered by Arvindbhai was to the extent of 26%. In relation to Rameshbhai, it was submitted that the Tribunal was unjustified in making the award in the sum of Rs. 25,000/-.

4. Shri Amrish Pandya, learned counsel for each of the claimants submitted that the Tribunal was unjustified in holding the driver negligent to the extent of 25% and also erred in deducting the claim made in favour of Arvindbhai by 25% on the ground of negligence of Arvindbhai himself. He submitted that the Cross Objections deserve to be allowed and the amount deserves to be enhanced in favour of Arvindbhai.

5. From the evidence available on the records, it would appear that right side of the headlights and part of the bus were damaged and the front portion of the rickshaw was totally damaged. In an accident between a bus and a rickshaw, small onslaught by a heavy vehicle would damage smaller vehicle to a great extent. Upon an accident if damage is caused to the rickshaw, it

cannot be held that the rickshaw had hit with full force on the front side of the bus. If such was correct statement, then, apart from the damage to the headlight, every portion of the bus would also have been damaged. Damage to the right side of the bus would show that both the vehicles had hit on their right side. In the circumstances and in the opinion of this Court, the Tribunal was justified in holding that present was a case of contributory negligence. The Tribunal has also given justified reasons for holding driver of the bus liable to the extent of 75%.

6. In para-32 of the judgment, the Tribunal has found that monthly earning of the applicant should be Rs.750/-. The entire amount was taken as loss of earning and the Tribunal held yearly loss to be Rs. 9000/-. Applying the multiplier of 15, the Tribunal held that under the head of loss of earning, the claimant-driver-Arvindbhai would be entitled to Rs. 1,35,000/-. In the opinion of this Court, the approach of the Tribunal was contrary to the available records.

When it has come on the records that the percentage of loss of earning would be 26%, then, the Tribunal should have observed that the loss would be 26% of Rs.750/- and to that loss, if multiplier of 15 is applied, the total future loss of income would be Rs. 35,100/-. In the opinion of this Court, the Tribunal could not have awarded a sum of Rs. 1,35,000/- towards future loss but it could only award a sum of Rs. 35,100/- under the said head. The award of Rs. 99900/- which is in excess of the claimant's entitlement, deserves to and is accordingly set aside.

7. The Tribunal has also made certain award under different heads. After going through the records, I must hold that the Tribunal was not unjustified in making other awards though submission of Ms. Jyoti Mehta was that under the head of global compensation, award of Rs. 34,900/- could not be made. In the opinion of this Court the argument would not hold water in view of the injuries suffered by the claimant Arvindbhai. He had suffered number of the

fractures, one of his eye is badly damaged and he had undergone long duration of pain and suffering. If under the said head, a sum of Rs. 34,900/- is awarded to the claimant, same cannot be held to be in excess of claimant's entitlement.

8. The claimant Arvindbhai would be entitled to a sum of Rs. 89,150/- only, which I will round off to Rs. 90,000/-. Out of the said amount of Rs. 90,000/-,25% is to be deducted towards the contributory negligence and therefore, the total claim awardable to driver Arvindbhai would be Rs. 67,750/-. I accordingly reduce the claim to that extent. In view of the discussion aforesaid, the Cross Objections deserve to and are accordingly dismissed.

9. So far as the award in favour of Rameshbhai is concerned, the Tribunal has made certain award under different heads and in the opinion of this Court, has not made any illegality in awarding a sum of Rs. 25,000/- in favour of claimant Rameshbhai.

10. In the matter of Rameshbhai, I do not find any

reason to interfere. First Appeal No. 625/84 [Gujarat State Road Transport Corporation Vs. Rameshbhai Naranbhai Patel] deserves to and is accordingly dismissed. However, First Appeal No. 624/84 [Gujarat State Road Transport Corporation Vs. Arvindbhai Narsinhbhai Patel] is allowed to the extent indicated above.

[R.S. GARG, J.]

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